

No. 89-1538

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1989

RANDALL HANK WILLIAMS,
Petitioner,
vs.

CATHERINE YVONNE STONE,
Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Alabama

REPLY BRIEF

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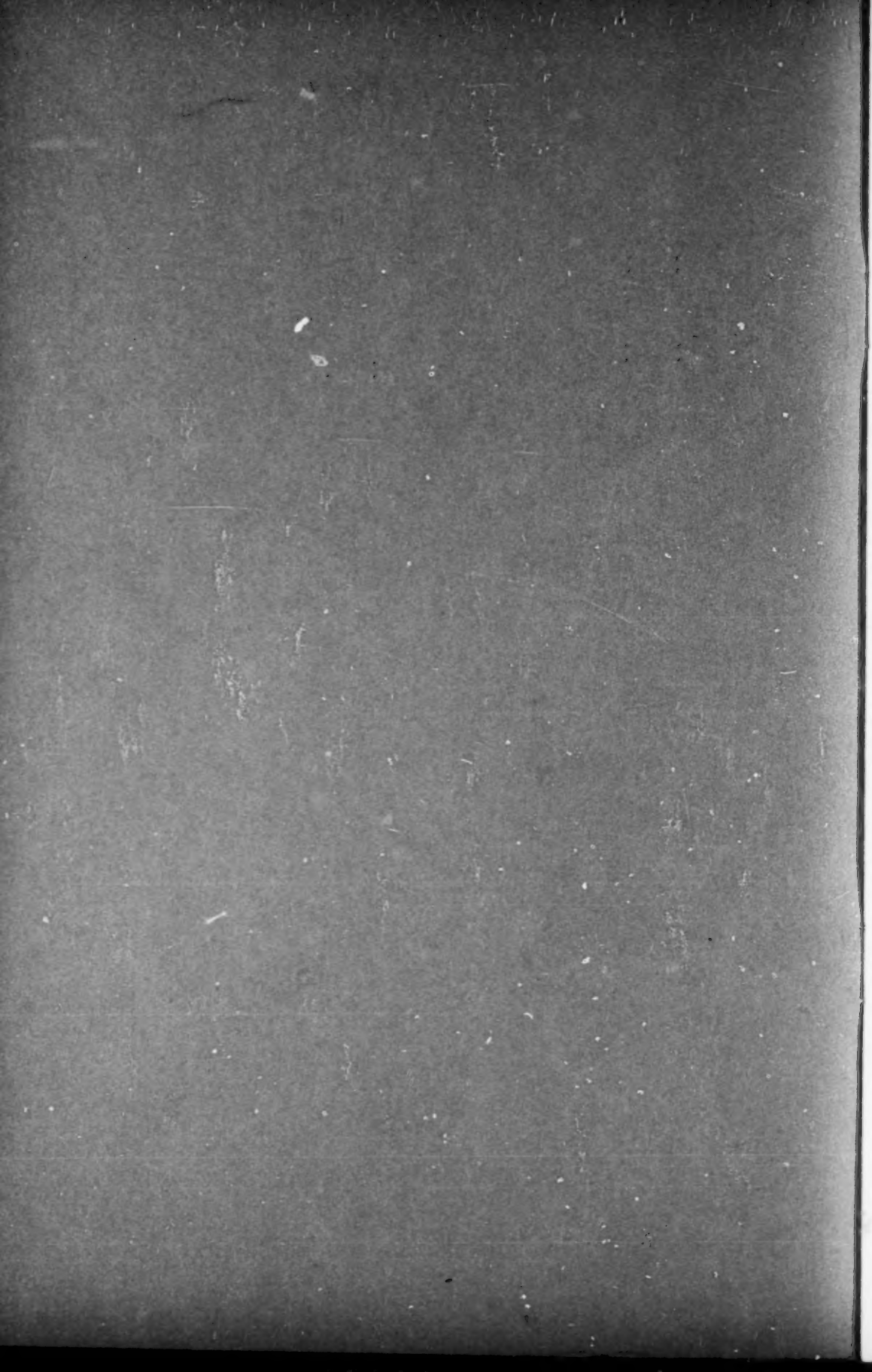


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REASONS FOR GRANTING THE WRIT

In her Brief in Opposition, Respondent attempts to minimize the far-reaching implications of the decision below, ignoring the concerns expressed by the American Council on Education in its *amicus curiae* brief. Respondent has also raised two arguments for the first time, that the Estate of Hiram "Hank" Williams was not closed at the time of the Alabama Supreme Court decision, and that Petitioner had an affirmative duty to intervene in an appeal of an action to which he was not a party and in which the Alabama Supreme Court had no jurisdiction

over him or the property which was taken from him. Each of these arguments is patently unsupported by the facts or the precedent cited by Respondent. Petitioner submits this Reply Brief pursuant to Supreme Court Rule 15.6 to address these arguments.

I. The Retroactivity Issues

Respondent does not dispute that this case involves the retroactive application of equal protection cases concerning inheritance rights of out-of-wedlock children through intestacy.¹ Instead, she contends that this case is controlled by *Reed v. Campbell*, 476 U.S. 852 (1986), whereas Petitioner believes that this case addresses the retroactivity issue upon which certiorari was granted but which was left unresolved in *Reed*.²

Upon plenary review, this Court concluded that retroactivity was not the appropriate basis for deciding *Reed*. In *Reed*, the state's interest in finality was not implicated since the estate had never been closed and the assets had

¹ Nor does Respondent dispute that this case raises the question identified in footnote 8 of *Reed v. Campbell*, 476 U.S. 852, 856 n.8 (1986) – whether subsequently enacted legislation regarding intestate succession can be applied retroactively so as to defeat and divest vested claims of distributees whose distributions have been approved by court order when closing an estate. See Petition at 16-18.

² Even if *Reed* controls, the proper precedent for retroactive application is *Lalli v. Lalli*, 439 U.S. 259 (1978), and not *Trimble v. Gordon*, 430 U.S. 762 (1977). The Alabama law at issue here was identical to the New York law upheld in *Lalli*. See Petition at 16.

not been "finally distributed." Therefore, the equal protection principles of *Trimble v. Gordon*, 430 U.S. 762 (1977), were to be given controlling effect. *Reed v. Campbell*, 476 U.S. 852, 856 (1986). In this case, the estate of Hank Williams, Sr. was closed by order of the appropriate Alabama court in 1975 (App. H-14), and the assets of the estate were in fact finally distributed. (App. H-12). For that reason, it is clear that the state interests in the "orderly disposition of decedents' estates," *id.* at 855, and in the finality of the distribution of assets of an estate are implicated in this proceeding.³ The unsettling effect of the Alabama decision on closed estates is palpable and far-reaching and raises precisely the issue left unresolved in *Reed*.

Respondent contends that this case involves an open estate as did *Reed*. This is transparently erroneous. It is undisputed that the estate was closed in 1975 with appropriate judicial approval (App. at H-14.1), and all assets of the estate were finally distributed just prior to that time. (App. H-12 and H-13). Those are the crucial, undisputed and unalterable facts. Retroactivity issues concerning an estate "reopened" in a collateral proceeding more than ten (10) years after that estate was formally closed hardly invoke the same analysis as an estate that is open, has never been closed, and whose assets remain undistributed. *Reed* expressly left open the application of cases such as *Trimble* and *Lalli v. Lalli*, 439 U.S. 259 (1978), in the circumstances involved in this pending litigation, and

³ This is the case even if the claims are deemed meritorious and even if "mistakes of law or fact may have occurred during the probate process." *Reed*, 476 U.S. at 855.

this case provides an excellent vehicle for deciding that unresolved question – a question that is of great concern to our nation's institutions of higher education and to other charitable institutions.

Respondent's characterization of the Alabama proceedings is a bit fanciful. Respondent argues that there were two unrelated elements to the Alabama Supreme Court's decision. First, the Alabama Supreme Court reopened the estate because "the administrators and attorneys for the estate had committed legal fraud on the court in concealing the existence and identity of an heir." (Opposition Brief at 20-21). Then, since the estate was open, the Alabama Supreme Court could, under *Reed*, apply *Trimble* retroactively to an "open" estate.

Reflection will demonstrate Respondent's fundamental misunderstanding of the decision below. The Alabama courts involved in this matter since 1967 routinely acknowledged that the existence of Respondent was legally irrelevant to her asserted right to share in the estate of Hank Sr. (App. H-6, H-11, I-5). The Alabama law at all relevant times allowed an out-of-wedlock child to inherit by intestacy from her father only under certain circumstances. The Alabama court in 1967 expressly held that the statutory requirements, which would have allowed Respondent to inherit from Hank Sr., were not met so as "to give the child in question any right of inheritance from [Hank Sr.] or to receive any part of his estate." (App. at H-6.2).

Under those circumstances, the biological status of Respondent was legally irrelevant under controlling Alabama law. The Alabama court made that express finding

in 1967. (App. at H-6.2). Even so, Respondent's existence was brought to the attention of the Alabama trial court in 1967 by the administratrix of Hank Sr.'s estate (App. at H-4.1 and I-3.2), by her guardian ad litem (App. at H-5.3 to H-5.5, H-8.1), and again by the then-administrator in 1975. (App. at H-10.1 and H-11.1).

Nevertheless, the Alabama Supreme Court found that the failure to disclose Respondent's existence before 1967 and the failure to advise the trial court in 1967 of hearsay evidence with respect to Respondent's possible parentage constituted a fraud upon that court. However, there could be no fraud unless such non-disclosure is combined with a view that the pre-existing statutory scheme concerning intestate succession was constitutionally infirm.⁴

The idea that the finding of fraud is conceptually distinct from the retroactive application of *Trimble v. Gordon* cannot withstand analysis. The central premise of the decision below was that *Trimble* should be applied retroactively to an estate that had been closed by final order for ten years before commencement of the action. See

⁴ Respondent quotes the Alabama Supreme Court's language with respect to applying a "constitutional law as it exists at the time that appeal is heard." (Opposition Brief at 18-19). What Respondent does not quote is the immediately previous portion of the opinion, which makes it clear that the Alabama Supreme Court felt that the pre-existing Alabama law of intestate succession had been found unconstitutional under *Trimble v. Gordon*. The reason, therefore, not to apply the pre-existing law of intestate succession was that it was unconstitutional, a clear indication of the retroactive application of *Trimble* in a collateral proceeding that challenges the validity of the disposition of the estate.

Petition at 11-12 and *supra* n.4. It was this retroactive application of *Trimble* which formed the basis for the creation of a legal duty of disclosure.⁵ After retroactively establishing this duty, the Alabama Supreme Court declared it to have been breached and that such breach constituted fraud. It then used such alleged fraud to justify the reopening of a closed estate and a redistribution of its assets. The retroactive application of "new" rules to a closed estate is precisely the question left open by *Reed* and which Petitioner urges this Court to decide.

II. Due Process Issues

What is most significant about Respondent's Brief in Opposition with regard to the due process issues is her agreement with Petitioner's position on the pivotal issues. First, she acknowledges forthrightly that she only appealed the third party action and did not appeal either Petitioner's complaint against her or her counterclaim against him. Second, she acknowledges that Petitioner never was a party to the third party action, which was the only matter appealed to the Alabama Supreme Court. The matter in which Petitioner was a party was resolved favorably to Petitioner and became final when unappealed. Third, there is not a word in defense of the Alabama Supreme Court's *in rem* theory of jurisdiction. Even the Alabama Supreme Court apparently realized

⁵ Under Alabama law there would be no duty to disclose the existence or identity of a person who had no legal claim to an estate. (App. at A-1.28 to A-1.29). Respondent had no legal interest in the estate unless *Trimble* were to be applied retroactively.

that it could not assert personal jurisdiction over Petitioner because he was not before the court (App. at C-1.8), but Respondent does not even purport to defend the *in rem* theory for asserting jurisdiction.

Respondent would require Petitioner to intervene in the appeal of the third party action to protect his rights. This can only be described as ludicrous.⁶ Petitioner's rights had been secured by the final unappealed judgments in his favor in the same proceeding. Any relief on the appeal would have to be derived from the third party defendants/appellees. As argued by Respondent in her appeal of the third party action:

" . . . the theory of liability is one of indemnification. . . . While the Original Complaint did not seek damages, there is no doubt that the adverse ruling to [Respondent] did cause her great pecuniary damage; a damage which she rightfully seeks *indemnification* from the third party defendants. The *fact* that [Respondent] did not appeal the judgment on the Original Complaint in no-wise affects her right to seek *indemnification*." [emphasis added]. (App. at G-6.11).

If ever applicable, her ambitious prayer that Hank Sr.'s estate be reopened was rendered a nullity by the

⁶ None of the cases cited by Respondent in support of this contention are applicable. None of the cases involved a requirement to intervene, only the right to intervene and the timeliness of a petition to do so. None of such purported precedent involved intervention in an appeal. Alabama Rule of Civil Procedure 24 cited by Respondent is only applicable to trial proceedings and is not applicable to Respondent's argument that Petitioner "should have" intervened in the third party action appeal.

final unappealed judgments on the original complaint and her counterclaim. By her own admission, Respondent was only seeking indemnification from the third party defendants because she lost in those actions. There is simply no reason to require Petitioner to intervene in such an action when he had won an unappealed judgment, definitely establishing his rights, as against Respondent, as part of the very same proceeding.⁷

Respondent also argues that Petitioner's interests were adequately represented by the actual appellees before the Alabama Supreme Court. (Opposition Brief at 16). This position is contradicted by numerous cases of this Court. See, e.g. *Hansberry v. Lee*, 311 U.S. 32 (1940) (an earlier decision could not be binding upon a person who had not been a party to such earlier litigation). The absurdity of the "surrogate litigators" theory is particularly evidenced by the outcome of this action. Despite the

⁷ This should also put to rest any concern about the timeliness of Petitioner's filings below. Respondent has also argued that Petitioner did not raise his constitutional claims at the earliest possible opportunity in the state court after actual notice of the third party complaint which purported to affect his rights. As a non-party to the third party indemnity action and the appeal of the dismissal thereof, Petitioner had no stake in that action or appeal. Only when the Alabama Supreme Court acted unconstitutionally by adjudicating his rights when it had no jurisdiction to do so and without affording him the constitutionally required notice and an opportunity to be heard did Petitioner have an interest in the third party action appeal. See Petition at 26. At that point, Petitioner sought to be heard before the Alabama Supreme Court but was denied that opportunity. See Petition at 9-11, App. at C-1.13 and G-7.

alleged fraud of the third party defendants, the Alabama Supreme Court exonerated them from liability. (App. at C-1.14). While the alleged fraud on the part of the third party defendants/appellees caused the Alabama Supreme Court to strip Petitioner of a significant portion of his assets, that court upheld summary judgment on behalf of the third party defendants/appellees, who were the only parties before the court and the ones who committed the alleged fraud.

CONCLUSION

This case is of tremendous potential significance because it unsettles the law of estates and inheritance. As the Brief *Amicus Curiae* of the American Council on Education makes abundantly clear, not only Petitioner, but institutions of higher education and other charitable entities, feel insecure as a result of the decision below in this case.

The opinion of the Alabama Supreme Court is a procedural and analytical nightmare that could have widespread and untoward consequences. When an estate is closed by judicial decree, distributees and their assignees must be able to rely on the soundness of the title to assets they obtain from the estate. This case provides an excellent vehicle for determining the retroactive application of "new" rules to a closed estate, the precise question left open in *Reed v. Campbell*.

The decision of the Alabama Supreme Court is contrary to prior decisions of this Court and has far-reaching implications in the areas of estate administration and due

process. For the reasons stated herein and in the Petition, this Court should set this case for full consideration.

Respectfully submitted,

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